IN THE HIGH COURT OF JUDICATURE AT BOMBAY
IN INSOLVENCY

NOTICE OF MOTION NO.141 OF 2006
IN
INSOLVENCY NOTICE NO.N/104 OF 2006

Re : Prabhudayal Beniprasad Chamaria & Ors. ...Jt.Debtors.
Ex-parte:
SICOM Ltd. ...Petg. Creditor.

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Mr. J. P. Sen i/b. Mr.Tushar Goradia for the Judgment Debtors.
Mr. P.V. Shah for Judgment Creditor.

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CORAM : DR.D.Y.CHANDRACHUD, J.

November 7, 2006.

P.C.

The Insolvency Notice is founded on orders passed by this Court on 25th April 2005 and 16th March 2006 in proceedings under Section 31 of the State Financial Corporations Act, 1951.

Four grounds have been urged in support of the Notice of Motion for setting aside the insolvency notice : (i) The principal debtor is a Sick Industrial Company which is before the AAIFR; (ii) Proceedings were not validly initiated under Sections 29 and 31 of the SFC Act, 1951; (iii) The Debtors were entitled to concessional rates of interest under RBI Guidelines; and (iv) The original proceedings would pertain to the exclusive jurisdiction of the Debts

Recovery Tribunal under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993.

At the hearing of the Notice of Motion, Counsel appearing on behalf of the Applicants has fairly stated that submissions (i) and (iii) above were specifically urged before and rejected by a Learned Single Judge; again in appeal by the Division Bench and a Special Leave Petition was also rejected by the Supreme Court. In so far as submission (ii) is concerned, it has been stated on behalf of the Applicants that the aforesaid submission was urged in the Special Leave Petition which was dismissed. Submission (iv) cannot be accepted because Section 34(2) of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 provides that the Act shall be in addition to and not in derogation of the provisions contained in the State Financial Corporations Act, 1951.

In that view of the matter, there is no merit in the Notice of Motion, which is accordingly dismissed.

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